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10 BRINK'S, INCORPORATED

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ERNIE RICARDO FERNANDEZ, individually,
15 on behalf of all others similarly situated, and on
behalf of the general public,

16 Plaintiff,

17 vs.

18 BRINK'S INCORPORATED, a Delaware
19 Corporation, and DOES 1-5,

20 Defendant.

Case No.

**NOTICE OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT BY
BRINK'S, INCORPORATED**

Action Filed: April 8, 2015
Trial Date: TBD

**TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant Brink's, Incorporated ("Defendant") hereby removes this action from the Superior Court of the State of California for the County of San Francisco to the United States District Court for the Northern District of California pursuant to 28 U.S.C. section 1332(d) (the Class Action Fairness Act ("CAFA")) and section 1446 on the grounds that: (1) Plaintiff Ernie Ricardo Fernandez ("Plaintiff") is "a citizen of a State different from any defendant," (2) "the number of members of all proposed plaintiff classes in the aggregate is" more than 100, and (3) "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." All CAFA requirements are satisfied in this case.

The foregoing facts were true at the time the Class Action Complaint in this matter was filed and remain true as of the date of the filing of this notice of removal. Removal jurisdiction is therefore appropriate as detailed more fully below:

I. THE STATE COURT ACTION

1. On or about April 8, 2015, Plaintiff filed a Class Action Complaint in the Superior Court of the State of California for the County of San Francisco (“Action”). The Action was assigned Case Number CGC-15-545202.

2. On or about May 13, 2015, Plaintiff served Defendant with a copy of the summons, Class Action Complaint ("Complaint"), alternative dispute resolution program information package, case management statement form, expedited jury trial information sheet, notice of case management conference, early settlement program pamphlet, amended and restated declaration of covenants, and the civil cover sheet. A true and correct copy of these documents is attached as **Exhibit A.**

3. On or about June 11, 2014, Defendant filed and served an Answer to the Complaint in San Francisco County Superior Court. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit B**.

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II. REMOVAL IS TIMELY

4. Here, removal is timely. The Summons and Complaint (and accompanying documents) are the only pleadings served on Defendant in this matter. Defendant has filed this notice within 30 days after receiving the pleadings from which it could first determine that this action was removable, and less than one year after commencement of this action. Thus, the removal is timely and proper pursuant to 28 U.S.C. § 1446(b), (c) and Rule 6 of the Federal Rules of Civil Procedure.

III. REMOVAL IS PROPER UNDER CAFA

5. The Action is removable under CAFA given the allegations and claims in the Complaint. The First Amended Complaint asserts claims for: (1) failure to pay overtime wages, (2) failure to pay premium rest period wages, (3) failure to pay premium meal period wages, (4) failure to pay wages due at termination, (5) violations of the California Labor Code under the California Private Attorneys General Act, and (6) unfair competition in violation of Business and Professions Code § 17200 et seq.

6. As a preliminary matter, Defendant notes that the Southern and Central Districts have already ruled that the class/representative claims being asserted by Plaintiff satisfy the CAFA requirements. The Southern District permitted CAFA removal in a related case styled *Timothy Belew v. Brink's Incorporated*, Case No. 37-2014-00014197-CU-OE-CTL ("*Belew Case*") that was similarly related to yet another case in the Central District in which the Central District ruled that the CAFA removal requirements were met. Plaintiff is asserting the same class/representative claims as in *Belew* (failure to pay overtime wages, violation of Business and Professions Code § 17200 et seq., waiting time penalties under Labor Code §§ 201, 202 and 203, and PAGA penalties). Both the instant Action and the *Belew Case* also involve an overlapping class period (both cover the period of January 3, 2013 to January 28, 2014) and the same putative class members (armored drivers or messengers who worked in California). (See generally Request for Judicial Notice ("RJN"), **Exhibits 1-3**, **Exhibit B** attached to **Exhibit 3** is the operative Complaint in the *Belew Case* [see ¶¶ 20.a., 27-36, 43-51, 59-65]; see also Complaint, ¶¶ 20, 26-32, 48-53, 54-77.)

7. In relevant part, CAFA grants district courts original jurisdiction over civil class action lawsuits filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant; the number of members of all proposed plaintiff classes in the aggregate is more than 100; and where the matter in controversy exceeds the sum or value of \$5 million, exclusive of interests and costs. 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. section 1446.

8. This Court has original jurisdiction over the Action under CAFA, in that it is a civil case filed as a class action wherein at least one member (if not all) of the putative class of plaintiffs is a citizen of a state different from Defendant, the number of members in Plaintiff's proposed classes in the aggregate is more than 100, and the matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs.

A. CAFA's Diversity of Citizenship Requirement Is Satisfied

9. CAFA's diversity requirement is satisfied when at least one plaintiff is a citizen of a state in which none of the defendants are citizens. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(a), (b).

10. According to the Complaint, Plaintiff is a resident of "the City of Livermore in the County of Alameda." (*See* Complaint, ¶ 4.)

11. Pursuant to 28 U.S.C. section 1332(c), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and the State where it has its principal place of business." The Supreme Court has established the proper test for determining a corporation's principal place of business for purposes of diversity jurisdiction. *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). The Court held that the "'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Id.* at p. 1184. The Court further clarified that the principal place of business was the place where the corporation "maintains its headquarters – provided that the headquarters is the actual center of direction, control and coordination." *Id.*; see *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1093 (9th Cir. 1990) (providing that where a corporation does business in a number of states and does not conduct the substantial predominance of its business in any single one, the state where

1 corporate headquarters is located is the corporation's principal place of business).

2 12. At all relevant times, Defendant has been a corporation incorporated under the laws
3 of the State of Delaware, with its principal place of business in the State of Virginia. (Declaration
4 of Corrinne Neal In Support of Notice of Removal ("Neal Declaration"), ¶ 2.) Accordingly,
5 Defendant is not a citizen of the State of California.

6 13. Based upon the foregoing, minimal diversity is established because Plaintiff is a
7 citizen of California and Defendant is a citizen of Delaware and Virginia. Removal is therefore
8 proper under 28 U.S.C. section 1332(d); *Serrano v. 180 Connect Inc.*, 478 F.3d 1018, 1019 (9th
9 Cir. 2007).

10 **B. CAFA's Class Size Requirement Is Satisfied**

11 14. Plaintiff brings the Action pursuant to California Code of Civil Procedure section
12 382 on behalf of "non-exempt employees of Defendant employed as drivers or messengers with
13 Defendant's armored car fleet, who performed work for Defendant within California within the
14 period of time commencing four years prior to the filing of this action." (Complaint ¶ 20.)
15 Plaintiff filed his Complaint on April 8, 2015. (Complaint, generally.) Plaintiff alleges that
16 "Defendant has employed upwards of 200 employees in California during the Class Period."
17 (Complaint, ¶ 21.) Indeed, based on calculations performed using Defendant's business records,
18 the putative class, as defined by the Complaint, includes at least approximately 937 persons during
19 that period. (Neal Declaration, ¶ 3; Declaration of Becki Graham In Support of Notice of Removal
20 ("Graham Declaration"), ¶ 3.) Thus, CAFA's size requirement is satisfied.

21 **C. CAFA's Requisite \$5 Million Amount in Controversy Is Satisfied**

22 15. CAFA authorizes the removal of class action cases in which the amount in
23 controversy for all class members exceeds \$5 million. 28 U.S.C. § 1332(d). Under CAFA, the
24 "District Court [must] determine whether it has jurisdiction by adding up the value of the claim of
25 each person who falls within the definition of [a plaintiff's] proposed class and determine whether
26 the resulting sum exceeds \$5 million." See *Standard Fire Insurance Co. v. Knowles*, 133 S. Ct.
27 1345, 1348 (2013).

28 16. In his Complaint, Plaintiff alleges no specific amount in controversy, other than to

1 state that the damages exceed \$25,000. (Complaint ¶ 2.) The failure of the Complaint to specify
 2 the total amount of monetary relief sought by Plaintiff does not deprive this Court of jurisdiction.
 3 *White v. J.C. Penny Life Ins. Co.*, 861 F.Supp. 25, 26 (S.D. W.Va. 1994) (defendant may remove
 4 suit to federal court notwithstanding the failure of Plaintiff to plead a specific dollar amount in
 5 controversy; if the rules were otherwise, “any Plaintiff could avoid removal simply by declining . .
 6 . to place a specific dollar claim upon its claim.”) Rather, to come under CAFA jurisdiction,
 7 Defendant simply needs to establish by a preponderance of the evidence that Plaintiff’s claims
 8 exceed the jurisdictional minimum. *Rodriguez v. AT&T Mobility Services, LLC*, 728 F.3d 975, 977
 9 (9th Cir. 2013), citing *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345 (2013); *Sanchez v.*
 10 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

11 17. Defendant denies the validity of Plaintiff’s claims and requests for relief and does
 12 not concede in any way that the allegations of the Complaint are accurate, that any or all of the
 13 current or former employees are entitled to any recovery in this case or appropriately included in
 14 the putative class. Nonetheless, the facial allegations in the Complaint and the *alleged damages* of
 15 Plaintiff exceed the jurisdictional minimum. *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th
 16 Cir. 1999) (finding that facts presented in notice of removal, combined with plaintiff’s allegations,
 17 were sufficient to support finding of jurisdiction).

18 18. In determining the amount in controversy for CAFA, all potential damages based on
 19 claims in the complaint, as well as attorney’s fees are included. *Guglielmino v. McKee Foods*
 20 *Corp.*, 506 F.3d 696, 701 (9th Cir. 2007) (unspecified attorney’s fees are appropriately counted
 21 toward the amount in controversy in CAFA removal actions). As set forth more fully below, the
 22 amount in controversy exceeds \$5.1 million dollars (if not more), which satisfies CAFA’s
 23 jurisdictional prerequisite.

24 19. Here, Plaintiff seeks, *inter alia*, the recovery of unpaid overtime wages, unpaid
 25 premium rest period wages, unpaid premium meal period wages, waiting time penalties, PAGA
 26 penalties, statutory penalties, and restitution during the periods stated in the Complaint on behalf of
 27 himself and the putative subclasses. (*See generally* Complaint; *see also* Complaint at pp.14-15.)
 28 Plaintiff also seeks attorneys’ fees. (*Id.*) As set forth below, Plaintiff’s Complaint, on its face,

1 satisfies the \$5 million threshold for CAFA removal. *See* 28 U.S.C. section 1332(d).

2 **1. Failure to Pay Overtime Wages**

3 20. Plaintiff alleges that Defendant did not pay all earned overtime wages during the
4 Claim Period (defined as April 8, 2011 through entry of final judgment) and that he and the
5 putative class are entitled to recover unpaid overtime wages. (Complaint ¶¶ 18, 26-32.) Plaintiff
6 does not specify how many hours of overtime Defendant allegedly failed to pay him or any
7 members of the putative class. He alleges only that “Defendant’s policy and practice became to
8 pay Mr. Fernandez and similarly situated employees their overtime rate of pay for only a portion of
9 the overtime hours actually worked each regularly scheduled workweek.” (Complaint ¶ 29.)

10 21. For purposes of determining the amount in controversy as to Plaintiff’s overtime
11 claim, Defendant reasonably assumes that Plaintiff contends that each putative class member
12 worked at least 1 hour of unpaid overtime per week. Although Plaintiff purports to recover unpaid
13 overtime for a period of four years (based upon his § 17200 claim), Defendant uses a conservative
14 two years for its calculations. Defendant also calculates the amount in controversy based upon
15 minimum wage (\$9.00 per hour) even though the average hourly rate of the putative class is
16 approximately \$15.40 per hour. (Graham Declaration, ¶ 3.) Thus, the amount in controversy is at
17 least \$1,364,688 (52 weeks x 2 years x 972 employees x \$9.00 minimum wage x 1.5 overtime).

18 **2. Failure to Authorize and Permit Rest Periods**

19 22. Plaintiff alleges that Defendant failed and authorized him and the putative class to
20 take rest periods during the Claim Period and is entitled to rest period premium pay of one hours’
21 wages for each day in which Plaintiff and the putative class were not permitted to take rest periods.
22 (Complaint ¶¶ 33-40.) Plaintiff does not specify how many rest periods are at issue. Plaintiff
23 simply alleges that “Defendant, as a pattern or practice, required, suffered or permitted Mr.
24 Fernandez and similarly situated employees to work more than three and one-half, six, and ten
25 hours per day, but Defendant regularly failed to permit and authorize Mr. Fernandez and similarly
26 situated employees to take all required and compliant rest breaks [. . .]” (Complaint ¶ 37.)

27 23. For purposes of determining the amount in controversy as to Plaintiff’s rest period
28 claim, Defendant reasonably assumes that Plaintiff contends at least 1 missed rest period per week

1 for each putative class member. Again, making a very conservative assumption of two years and
 2 calculating the amount in controversy at minimum wage even though the average hourly rate is
 3 much higher, Defendant calculates an amount in controversy of at least \$909,792 (52 weeks x 2
 4 years x 972 employees x \$9.00 minimum wage).

5 **3. Failure to Provide Meal Periods**

6 24. Plaintiff alleges that Defendant failed to provide first and second meal periods and
 7 is entitled to meal period premium pay of one hours' wages for each day in which Defendant did
 8 not provide Plaintiff and the putative class with applicable meal periods. (Complaint ¶¶ 41-47.)
 9 Plaintiff does not specify how many rest periods are at issue. He alleges that "Defendant, as a
 10 pattern or practice failed to pay one-hour's wages at Mr. Fernandez' and similarly situated
 11 employees regular hourly rate for each day each employee was not provided with or allowed to
 12 take a required and compliant meal period [. . .]" (Complaint ¶ 45.)

13 25. For purposes of determining the amount in controversy as to Plaintiff's meal period
 14 claim, Defendant reasonably assumes that Plaintiff contends at least 1 missed meal period per week
 15 for each putative class member. Again, making a very conservative assumption of two years and
 16 calculating the amount in controversy at minimum wage even though the average hourly rate is
 17 much higher, Defendant calculates an amount in controversy of at least \$909,792 (52 weeks x 2
 18 years x 972 employees x \$9.00 minimum wage).

19 **4. Waiting Time Penalties**

20 26. Plaintiff claims waiting time penalties for failure to pay all compensation due and
 21 owing at the time of discharge of Plaintiff and putative class members and seeks payment of such
 22 penalties under Labor Code § 203. (Complaint ¶¶ 48-53.)

23 27. In reviewing Defendants' business records, there are approximately 442 putative
 24 class members who have been discharged. (Graham Declaration, ¶ 4.) Though the average hourly
 25 rate of these employees is \$14.10 (Graham Declaration, ¶ 4), Defendant uses only minimum wage
 26 to calculate the amount in controversy. Thus, the amount in controversy for waiting time penalties
 27 is at least \$954,720 (8 hours/day x \$9/hour x 442 employees x 30 days).

28 ///

1 **5. Attorney Fees**

2 28. The Complaint seeks an award of attorney fees for all of its causes of action. It is
 3 well established that in determining whether a complaint meets the amount in controversy
 4 requirement, a court should consider attorney fees. *Goldberg v. C.P.C. Int'l, Inc.*, 678 F.2d 1365,
 5 1367 (9th Cir.1982) (attorneys' fees may be taken into account to determine jurisdictional
 6 amounts). A realistic estimate of Plaintiff's attorneys' fees is 25% of the total recovery. See
 7 *Muniz v. Pilot Travel Centers, LLC*, 2007 WL 1302504 at *4, fn. 8 (noting that "in California,
 8 where wage and hour class actions have settled prior to trial for millions of dollars, it is not
 9 uncommon for an attorneys' fee award to be in the realm of 25% to 30% of the settlement").
 10 Because the amount in controversy for Plaintiff's claims for unpaid overtime, failure to provide
 11 rest and meal periods and waiting time penalties is approximately \$ 4,138,992, as detailed above,
 12 Plaintiff's attorneys' fees must be estimated as approximately \$ 1,034,748, which is 25% of the
 13 amounts in controversy for those claims.

14 **4. Summary**

15 29. Based on the allegations in the Complaint; the damages, penalties and attorneys'
 16 fees sought by Plaintiff; and the number of putative class members, as explained in detail above,
 17 the amount in controversy is greater than \$ 5,173,740, which satisfies CAFA's jurisdictional
 18 prerequisite.¹

19 **IV. VENUE IS PROPER**

20 30. In accordance with 28 U.S.C. section 1441(a), this notice of removal is filed in the
 21 district court of the United States in which the Action is pending. The Superior Court for the
 22 County of San Francisco is located within the Northern District of California. 28 U.S.C. § 84(c)(3).
 23 Therefore, venue is proper in this Court because it is the district and division embracing the place
 24 where the Action is pending. 28 U.S.C. § 1441(a).

25 ///

26
 27 ¹ Although Defendant has not attempted to include estimations of the amount in controversy of
 28 Plaintiff's PAGA claim in supporting its removal, such amounts are clearly in controversy and
 would further support jurisdiction under CAFA.

V. SATISFACTION OF REQUIREMENTS OF 28 U.S.C. § 1446

31. Pursuant to 28 U.S.C. §§ 1446(a), 1447(b), and 1449, a true and correct copy of all pleadings served upon Defendant are attached to this Notice of Removal.

32. As required by 28 U.S.C. section 1446(b), this notice of removal was filed within 30 days after service of the Complaint on Defendant. See Section II. above.

33. As required by 28 U.S.C. section 1446(d), Defendant shall promptly provide notice of this removal to Plaintiff through his attorneys of record.

34. As required by 28 U.S.C. section 1446(d), a copy of the original notice of removal will be filed with the Superior Court of the State of California, for the County of San Francisco.

VI. CONCLUSION

35. For the foregoing reasons, Defendant hereby removes the above-entitled action to United States District Court for the Northern District of California.

36. In the event this Court has a question regarding the propriety of this notice of removal, Defendant requests that it issue an Order to Show Cause so that it may have an opportunity to more fully brief the basis for this removal.

DATED: June 12, 2015

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s/ Becki D. Graham
BECKI D. GRAHAM

Attorneys for Defendant
BRINK'S, INCORPORATED

21450380.3

EXHIBIT A

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11 Counsel for Plaintiff

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 08 2015

CLERK OF THE COURT
BY: VICTORIA GONZALEZ
Deputy Clerk

12 IN THE SUPERIOR COURT OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14 Case No.

CGC-15-545202

15 Class Action

16 COMPLAINT FOR COMPENSATORY
17 DAMAGES, STATUTORY
18 PENALTIES, CIVIL PENALTIES,
19 RESTITUTION, AND INJUNCTIVE
20 RELIEF FOR:

21 ERNIE RICARDO FERNANDEZ,
22 individually, on behalf of all others similarly
23 situated, and on behalf of the general public,
24 Plaintiff,

25 *Versus*

26 BRINK'S INCORPORATED, a Delaware
27 Corporation, and DOES 1-5,
Defendants.

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY PREMIUM REST PERIOD WAGES;
3. FAILURE TO PAY PREMIUM MEAL PERIOD WAGES
4. FAILURE TO PAY WAGES DUE AT TERMINATION;
5. VIOLATIONS OF THE CALIFORNIA LABOR CODE UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT; AND
6. UNFAIR COMPETITION.

Amount demanded exceeds \$10,000.00

Jury Trial Demanded

1 Plaintiff alleges upon personal knowledge, and as to all other matters upon information and
2 belief:

3 **JURISDICTION AND VENUE**

- 4 1. This Court has jurisdiction of these alleged violations of the California Labor Code,
5 the California Business and Professions Code, and Industrial Welfare Commission
6 (hereinafter IWC) Wager Order No. 9.
- 7 2. Jurisdiction is proper in this Court because damages alleged exceed \$25,000.00. (Cal.
8 Code of Civ. Proc. § 580, subd. (b)(2)).
- 9 3. Venue is proper because the Defendant conducts its business, and the conduct
10 underlying the alleged violations of law as to Plaintiff Ernie Ricardo Fernandez
11 (hereinafter Mr. Fernandez) primarily occurred within the City and County of San
12 Francisco.

13
14 **PARTIES**

- 15 4. Mr. Fernandez is an individual and a resident of the City of Livermore in the County
16 of Alameda, California.
- 17 5. Mr. Fernandez also proceeds in a representative capacity on behalf of the general
18 public under the authority granted to him by the California Private Attorneys General
19 Act of 2004.
- 20 6. Defendant Brink's Incorporated (hereinafter Defendant) is a corporation organized
21 and existing under the laws of the State of Delaware. Defendant does business as
22 "Brink's", as "Brinks", and as "Brink's, Incorporated".
- 23 7. Mr. Fernandez is ignorant of the true names and capacities of defendants sued as
24 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names.
25 Plaintiff will amend this complaint to allege their true names and capacities when
26 ascertained.
- 27 8. Mr. Fernandez is informed, believes, and on that basis alleges that at all times

1 mentioned herein, each of the defendants was the agent and employee of each of the
 2 remaining defendants and, in doing the things alleged in this Complaint, was acting
 3 within the course and scope of such agency and employment.

4 9. Mr. Fernandez is informed, believes, and on that basis alleges that at all times
 5 mentioned herein, each of the defendants' actions or omissions was ratified by each
 6 of the remaining defendants.

7 10. Mr. Fernandez is informed, believes, and on that basis alleges that each of the acts or
 8 omissions of each of a defendant's agents alleged herein was ratified by that
 9 defendant, as well as by each of the remaining defendants.

11 COMMON FACTUAL ALLEGATIONS

12 11. Defendant employed Mr. Fernandez from October 13, 2008 through his termination on
 13 January 27, 2015.

14 12. Defendant operates a national armored car business, by which it serves as a secure
 15 courier delivering valuable goods from a point of origin to a destination.

16 13. Mr. Fernandez is informed, believes, and on that basis alleges that Defendant almost
 17 exclusively transports fiat currency on behalf of its customers.

18 14. Defendant's armored cars are operated by two-person teams composed of one driver
 19 and one messenger. The driver's responsibility is to navigate the team's assigned route,
 20 while the messenger's responsibility is to handle the actual pickup and delivery of the
 21 valuable goods.

22 15. Mr. Fernandez worked for Defendant as a messenger.

23 16. Defendant had and has the exclusive power to deliver the wages that were earned and
 24 are due to Mr. Fernandez and similarly situated employees.

25 17. Wage Order No. 9 (8 Cal. Code Reg. § 11090; hereinafter Wage Order No. 9) applies
 26 Defendant's employment of Mr. Fernandez and similarly situated employees.
 27

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18. The term Claim Period here refers a period of time commencing four years prior to the filing of this action and terminating upon the entry of final judgment in this action.

CLASS ACTION ALLEGATIONS

19. Mr. Fernandez brings this action on his own behalf and on behalf of all persons similarly situated. The claims herein have been brought and may properly be maintained as a class action under California Code of Civil Procedure section 382 because there is a well-defined community of interest among class members with respect to the claims asserted herein and the proposed class is easily ascertainable.

20. **Class Definition:** The class that Mr. Fernandez seeks to represent is composed of those non-exempt employees of Defendant employed as drivers or messengers with Defendant's armored car fleet, who performed work for Defendant within California within the period of time commencing four years prior to the filing of this action.

21. **Ascertainability and Numerosity:** The potential members of the class as defined herein are so numerous that joinder would be impracticable. Mr. Fernandez is informed, believes, and on that basis alleges that Defendant has employed upwards of 200 employees in California during the class period. The names and addresses of the class members are available from Defendant. Notice can be provided to the class members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

22. **Commonality:** There are questions of law and fact common to Mr. Fernandez and the class that predominate over any questions affecting only individual members of the class. These common questions of law and fact include, without limitation:

- a. Whether Defendant has failed to pay overtime wages for all overtime hours worked, in violation of Labor Code section 510 and Wage Order No. 9;
- b. Whether Defendant's failure to pay overtime wages for all overtime hours worked constitutes an unlawful, unfair, or fraudulent business practice,

1 under Business and Professions Code section 17200 *et seq.*;

2 c. Whether Defendant has failed to provide adequate off-duty meal periods
3 and payments for missed meal periods, in violation of Labor Code sections
4 226.7 and 512, and Wage Order No. 9;

5 d. Whether Defendant's failure to provide adequate meal periods and
6 payments for missed meal periods constitutes an unlawful, unfair, or
7 fraudulent business practice, under Business and Professions Code
8 section 17200 *et seq.*;

9 e. Whether Defendant has failed to authorize and permit adequate rest
10 periods and payments for missed rest periods, in violation of Labor Code
11 section 226.7 and Wage Order No. 9;

12 f. Whether Defendant's failure to authorize and permit adequate rest
13 periods and payment for missed rest periods constitutes an unlawful,
14 unfair, or fraudulent business practice, under Business and Professions
15 Code section 17200 *et seq.*;

16 g. Whether Defendant's failure to provide an accurate itemized statement
17 with each payment of wages showing the actual gross wages due by law
18 constitutes an unlawful, unfair, or fraudulent business practice, under
19 Business and Professions Code section 17200 *et seq.*;

20 h. Whether Defendant has violated Labor Code section 1174 and Wage
21 Order No. 9 by failing to maintain documentation of all gross wages earned
22 each day by Employees;

23 i. Whether Defendant's failure to maintain documentation of all gross wages
24 earned each day by Employees constitutes an unlawful, unfair, or
25 fraudulent business practice, under Business and Professions Code
26 section 17200 *et seq.*;

27 j. Whether Defendant has violated Labor Code sections 201 through 203 by

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1 failing, upon termination, to timely pay class members' due and unpaid
 2 overtime, premium meal period, and premium rest period wages;

3 k. Whether Defendant's failure to pay all wages due and unpaid at the time
 4 of termination of employment constituted an unlawful, unfair, or
 5 fraudulent business practice, under Business and Professions Code
 6 section 17200 *et seq.*;

7 l. The proper formulas for calculating restitution, damages, and waiting time
 8 and other statutory penalties owed to Mr. Fernandez and the class alleged
 9 herein.

10 **23. Typicality:** Mr. Fernandez's claims are typical of the claims of the class. Defendant's
 11 common policy and course of unlawful conduct has caused Mr. Fernandez and
 12 similarly situated employees to sustain the same or similar injuries and damages
 13 caused by the same policies and practices of Defendant. Mr. Fernandez claims are
 14 thereby representative of and co-extensive with the claims of the class.

15 **24. Adequacy of Representation:** Mr. Fernandez does not have any conflicts of interest
 16 with other class members and will prosecute the case vigorously on behalf of the class.
 17 Mr. Fernandez will fairly and adequately represent and protect the interests of the
 18 class members. Mr. Fernandez's counsel are competent and experienced in litigating
 19 employment actions, including wage and hour class actions.

20 **25. Superiority of Class Action:** A class action is superior to other available means for
 21 the fair and efficient adjudication of this controversy. Individual joinder of all class
 22 members is not practicable, and questions of law and fact common to the class
 23 predominate over any questions affecting only individual members of the class. Each
 24 class member has been damaged and is entitled to recovery by reason of Defendant's
 25 unlawful policies and practices described herein. The damages suffered by individual
 26 class members may be relatively small, albeit significant; because of this, the expense
 27 and burden of individual litigation make it impractical for most Class Members

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1 individually to seek redress for the wrongful conduct alleged. Class action treatment
 2 will allow those similarly situated persons to litigate their claims in the manner that is
 3 most efficient and economical for the parties and the judicial system. Moreover, the
 4 risk of reprisal against individual plaintiffs weighs in favor of class action treatment.
 5 Finally, the prosecution of individual remedies by members of the plaintiff class would
 6 tend to establish inconsistent standards of conduct for the defendant and to result in
 7 the impairment of class members' rights and the disposition of their interests through
 8 actions to which they were not parties.

9
 10 **FIRST CAUSE OF ACTION:**

11 **FAILURE TO PAY OVERTIME WAGES**

12 26. The allegations set out in all of the above paragraphs of this Complaint are
 13 incorporated here by reference.

14 27. Labor Code sections 1197 and 1198 provide that it is unlawful to employ persons for
 15 less than the minimum hourly rate and for longer than the hours set by the IWC or
 16 under conditions prohibited by the applicable Wage Orders.

17 28. At all times relevant herein, Labor Code section 510 and Wage Order No. 9 provided
 18 that employees are entitled to premium overtime wages for all hours worked in excess
 19 of eight in one day, and for all hours worked in excess of 40 in one regularly scheduled
 20 workweek.

21 29. At some time within the Claim Period, Defendant's policy and practice became to pay
 22 Mr. Fernandez and similarly situated employees their overtime rate of pay for only a
 23 portion of the overtime hours actually worked each regularly scheduled workweek.

24 30. Within the Claim Period, Defendant has as a pattern and practice required, permitted,
 25 or suffered Mr. Fernandez and similarly situated employees to work excess of eight
 26 per day, and in excess of 40 per regularly scheduled workweek, but has failed to Mr.
 27

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Fernandez and similarly situated employees the overtime rates of pay required for all such hours worked under Labor Code section 510 and Wage Order No. 9.

31. Defendant has failed and continues to fail to pay Mr. Fernandez and similarly situated employees the amounts owed.

32. Defendant therefore owes Mr. Fernandez and similarly situated employees a sum according to proof at trial, representing the amount of overtime wages owed but unpaid, prejudgment interest on that sum, and Mr. Fernandez and similarly situated employees' reasonable attorneys' fees and costs. (Lab. Code § 1194.)

SECOND CAUSE OF ACTION:

FAILURE TO PAY PREMIUM REST PERIOD WAGES

33. The allegations set out in all of the above paragraphs of this Complaint are incorporated here by reference.

34. Labor Code section 226.7, subdivision (a) provides that it is unlawful to fail to authorize and permit employees to take rest and meal periods mandated by the applicable Industrial Welfare Commission Wage Orders.

35. Wage Order No. 9 requires employers to authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours worked or major fraction thereof. Thus, an employee is entitled to a first 10-minute rest break after three and one-half hours worked; a second after six hours worked, and a third after 10 hours worked.

36. Labor Code section 226.7, subdivision (b) states that an employer who fails to provide such mandated rest periods to an employee "shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

37. Within the Claim Period, Defendant as a pattern or practice required, suffered, or permitted Mr. Fernandez and similarly situated employees to work more than three

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1 and one-half, six, and ten hours per day, but Defendant regularly failed to permit and
 2 authorize Mr. Fernandez and similarly situated employees to take all required and
 3 compliant rest breaks to which they were thus entitled, in violation of Labor Code
 4 section 226.7, subdivision (a) and Wage Order No. 9.

5 38. Within the Claim Period, Defendant as a pattern or practice failed to pay one-hour's
 6 wages at Mr. Fernandez and similarly situated employees' regular hourly rates for
 7 each day each employee was not provided with or allowed to take a required and
 8 compliant rest period, in violation of Labor Code section 226.7, subdivision (b) and
 9 Wage Order No. 9.

10 39. Defendant has failed and continues to fail to pay Mr. Fernandez and similarly situated
 11 employees the amount of premium rest period wages owed.

12 40. Under the provisions of Labor Code section 226.7, subdivision (b) and Wage Order
 13 No. 9, Mr. Fernandez and similarly situated employees are entitled to payment of one
 14 additional hour of pay at their regular rate of compensation for each work day that a
 15 rest period was not provided to each class member, in a sum according to proof at
 16 trial, plus interest thereon from the dates such wages became due and payable.

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 18 **THIRD CAUSE OF ACTION:**

19 **FAILURE TO PAY PREMIUM MEAL PERIOD WAGES**

20 41. The allegations set out in all of the above paragraphs of this Complaint are
 21 incorporated here by reference.

22 42. Labor Code section 512, subdivision (a), and Wage Order No. 9 provide that an
 23 employer must provide an employee who works more than five hours per day with a
 24 meal period of not less than 30 minutes, and must provide an employee who works
 25 more than ten hours per day with a second meal period of not less than 30 minutes.

26 43. Labor Code section 226.7, subdivision (b) states that an employer who fails to provide
 27 such mandated meal periods to an employee "shall pay the employee one additional

1 hour of pay at the employee's regular rate of compensation for each work day that the
2 meal or rest period is not provided."

3 44. Within the Claim Period, Defendant as a pattern or practice required, suffered, or
4 permitted Mr. Fernandez and similarly situated employees to work more than five
5 and ten hours per day, but failed to permit and authorize Mr. Fernandez and similarly
6 situated employees to take all meal periods to which they were thus entitled, in
7 violation of Labor Code section 226.7, subdivision (a) and Wage Order No. 9.

8 45. Within the Claim Period, Defendant as a pattern or practice failed to pay one-hour's
9 wages at Mr. Fernandez and similarly situated employees regular hourly rate for each
10 day each employee was not provided with or allowed to take a required and compliant
11 meal period, in violation of Labor Code section 226.7, subdivision (b) and Wage Order
12 No. 9.

13 46. Defendant has failed and continues to fail to pay Mr. Fernandez and similarly situated
14 employees the amount of premium meal period wages owed.

15 47. Under the provisions of Labor Code section 226.7, subdivision (b) and Wage Order
16 No. 9, Mr. Fernandez and similarly situated employees are entitled to payment of one
17 additional hour of pay at their regular rate of compensation for each work day that a
18 meal period was not provided, in a sum according to proof at trial, plus interest
19 thereon from the dates such wages became due and payable.

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FOURTH CAUSE OF ACTION:**WAITING TIME PENALTIES**

48. The allegations set out in all of the above paragraphs of this Complaint are incorporated here by reference.

49. Labor Code section 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge.

50. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work.

51. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by section 201 or section 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

52. Defendant as a pattern and practice willfully failed to pay Mr. Fernandez and similarly situated employees all wages earned and unpaid at the time of discharge or termination, as required by Labor Code sections 201 and 202.

53. Defendant is accordingly liable to Mr. Fernandez and similarly situated employees for penalties pursuant to Labor Code section 203 in an amount according to proof at trial, plus reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION:**VIOLATIONS OF THE LABOR CODE UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

54. The allegations set out in all of the above paragraphs of this Complaint are incorporated here by reference.

55. Mr. Fernandez brings this representative cause of action on behalf of the general public, and seeks to vindicate his rights under the California Labor Code as well as

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1 those of other similarly situated current and former employees of Defendant.

2 56. For purposes of this cause of action, the group of aggrieved employees consists of
3 those employees of Defendant serving within California within the period
4 commencing one year prior to February 26, 2015 and proceeding through the entry of
5 final judgment in this action. This group is referred to here as the Representative
6 Group.

7 57. Mr. Fernandez seeks to recover penalties for violations of the California Labor Code
8 committed by Defendant against the members of the Representative Group as set out
9 in this Complaint.

10 58. For those violations of the Labor Code, the Representative Group members have no
11 administrative remedies to exhaust.

12 59. Mr. Fernandez has fully complied with PAGA notice requirements by giving both the
13 Labor and Workforce Development Agency, and Defendant written notice of his
14 PAGA claim. Those notices was sent via certified mail on February 26, 2015.

15 60. Thirty-three days have passed since Mr. Fernandez gave the LWDA notice of his
16 PAGA claims, and he now has the right to pursue those claims through a
17 representative civil suit.

18 61. Pursuant to California Labor Code section 2699, subdivisions (a) and (f), Mr.
19 Fernandez seeks to recover civil penalties against Defendant for its Labor Code
20 violations occurring from February 26, 2012 through the date of this filing.

21 62. In addition, Mr. Fernandez seeks to recover reasonable attorneys' fees and costs as
22 authorized by Labor Code section 2699, subdivision (g)(1).

23
24 **SIXTH CAUSE OF ACTION:**

25 **UNFAIR COMPETITION**

26 63. The allegations set out in all of the above paragraphs of this Complaint are
27 incorporated here by reference.

1 64. California Business and Professions Code sections 17200 *et seq.* prohibit acts of unfair
2 competition, which include any “unlawful and unfair business practices.”

3 65. The conduct of Defendant as alleged in this Complaint has been unfair, unlawful, and
4 deleterious to Mr. Fernandez and similarly situated employees. Mr. Fernandez and
5 similarly situated employees are “persons” within the meaning of Business and
6 Professions Code section 17204, and therefore have standing to bring this cause of
7 action for restitution.

8 66. The prompt and proper payment of wages is a fundamental public policy of the State
9 of California.

10 67. It is also the public policy of the State to enforce minimum labor standards, to ensure
11 that employees are not required or permitted to work under substandard and unlawful
12 conditions, and to protect those employers who comply with the law from losing
13 competitive advantage to other employers who fail to comply with labor standards
14 and requirements.

15 68. Through the conduct alleged herein, Defendant acted contrary to these public
16 policies and has thus engaged in unlawful and unfair business practices in violation of
17 Business and Professions Code sections 17200 *et seq.*, depriving Mr. Fernandez and
18 similarly situated employees of the rights, benefits, and privileges guaranteed to
19 employees under California law.

20 69. Defendant as a pattern and practice violated the following statutes and regulations
21 with respect to Mr. Fernandez and similarly situated employees:

- 22 a. Wage Order No. 9 and Labor Code sections 1197, 1198, and 510 (failure to
- 23 pay overtime wages);
- 24 b. Wage Order No. 9 and Labor Code sections 201, 202, 203, 204, 208, and
- 25 226.7 (failure to timely pay wages due); and
- 26 c. Wage Order No. 9 and Labor Code sections 512 and 226.7 (failure to
- 27 provide rest and meal periods; failure to pay premium rest and meal period

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1 wages).

2 70. As a proximate result of having engaged in these business practices, which are unfair
3 and unlawful business practices within the meaning of Business and Professions Code
4 sections 17200 *et seq.*, Defendant harmed Mr. Fernandez and similarly situated
5 employees through the nonpayment of wages, the lost use-value of such funds, and
6 other economic injuries. Defendant has thereby gained an unfair competitive
7 advantage over businesses that see fit to comply with California's fundamental
8 workplace civil rights.

9 71. Defendant also unjustly earned or retained funds by virtue of their engaging in such
10 unlawful conduct. Under Business and Professions Code section 17203, Mr.
11 Fernandez and similarly situated employees are entitled to obtain restitution of these
12 funds as set forth here.

13 72. Mr. Fernandez and similarly situated employees are entitled to enforce all applicable
14 penalty provisions of the Labor Code pursuant to Business & Professions Code
15 section 17202.

16 73. Mr. Fernandez and similarly situated employees' success in this action will enforce
17 important rights affecting the public interest. In this regard, Mr. Fernandez sues on
18 behalf of the general public as well as on behalf of himself and others similarly situated.
19 Mr. Fernandez seeks and is entitled to reimbursement of business expenses, unpaid
20 compensation, declaratory relief, civil penalties, and any other appropriate remedy.

21 74. In order to prevent Defendant from profiting and benefiting from their wrongful and
22 illegal acts and continuing those acts, Mr. Fernandez requests an order requiring
23 Defendant to disgorge all the profits and gains it has reaped and restore such profits
24 and gains into a fluid recovery fund for the benefit of Mr. Fernandez and other
25 similarly situated employees, from whom such profits and gains were unlawfully
26 taken.

27 75. The legal remedies available to Mr. Fernandez and others similarly situated are

1 inadequate because Defendant's unfair and unlawful business practices constitute
 2 ongoing actual and threatened injuries to personal rights that cannot be compensated
 3 by an ordinary damages award. Accordingly, Mr. Fernandez request injunctive relief
 4 to prevent the Defendant's practices which constitute unfair competition, and to
 5 restore to Mr. Fernandez and others similarly situated any money which may have
 6 been acquired by means of such unfair competition.

7 76. Mr. Fernandez has assumed the responsibility of enforcement of the laws and lawful
 8 claims specified herein. There is a financial burden incurred in pursuing this action
 9 which is in the public interest. Therefore, an award of reasonable attorneys' fees are
 10 appropriate pursuant to Code of Civil Procedure section 1021.5.

11 77. Mr. Fernandez, on behalf of himself and similarly situated employees, requests relief
 12 as described below.

13
 14 **PRAYER FOR RELIEF**

15 Wherefore, Mr. Fernandez, on his own behalf and on behalf of other similarly situated
 16 employees, prays for judgment against Defendant as follows:

- 17 a. For an order certifying the proposed class;
 18 b. For compensatory damages as follows:
 19 i. For the amount of overtime wages that remain unpaid to Mr. Fernandez and
 20 similarly situated employees;
 21 ii. For the amount of unpaid premium rest period wages that remain unpaid to
 22 Mr. Fernandez and similarly situated employees;
 23 iii. For unpaid premium meal period wages that remain unpaid to Mr.
 24 Fernandez and similarly situated employees;
 25 iv. For interest pursuant to Labor Code section 218.6 on due and unpaid wages
 26 from the day such amounts were due, according to proof at trial;
 27

- 1 b. For statutory penalties as to Mr. Fernandez and similarly situated employees
- 2 pursuant to Labor Code section 203 plus interest thereon, according to proof at trial;
- 3 c. For civil penalties pursuant to Labor Code section 2699 for violations of the Labor
- 4 Code committed against Mr. Fernandez and all other aggrieved employees, in
- 5 amount according to proof at trial;
- 6 d. For statutory penalties as to Defendant's unfair business practices pursuant to
- 7 Business and Professions Code section 17206, according to proof at trial;
- 8 c. For restitution pursuant to Business & Professions Code section 17203 in an amount
- 9 equivalent to the amounts unjustly earned or retained by Defendant by virtue of
- 10 their engaging in violations of the Unfair Competition Law, according to proof at
- 11 trial;
- 12 d. For disgorgement all the profits and gains Defendant has reaped from its violations
- 13 of the Unfair Competition Law into a fluid recovery fund;
- 14 e. For preliminary and permanent injunctive relief to prevent the Defendant's
- 15 practices which constitute unfair competition, and to restore to Mr. Fernandez and
- 16 others similarly situated any money which may have been acquired by means of such
- 17 unfair competition;
- 18 f. For reasonable attorneys' fees and costs, including expert witness fees, according
- 19 to proof, pursuant to Code of Civil Procedure section 1021.5, and Labor Code
- 20 sections 218.5, 203, 1194, and 2699;
- 21 g. For costs of suit; and

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1 h. For such other and further relief as the Court deems proper.

2
3 **JURY DEMAND**

4 Mr. Fernandez hereby demands a trial by jury.

5
6 Respectfully submitted,

7 Dated: April 7, 2015

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8 
9 By: _____

10 ARLO GARCÍA URIARTE

11 BRENT A. ROBINSON

12 COUNSEL FOR PLAINTIFF
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EXHIBIT B

1 SPENCER C. SKEEN, State Bar No. 182216
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5 BECKI D. GRAHAM, State Bar No. 238010
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6 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Steuart Tower, Suite 1300
7 One Market Plaza
San Francisco, CA 94105
8 Telephone: 415.442.4810
Facsimile: 415.442.4870

9 Attorneys for Defendant
10 BRINK'S INCORPORATED

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13
14 ERNIE RICARDO FERNANDEZ, individually,
on behalf of all others similarly situated, and on
15 behalf of the general public,

16 Plaintiff,

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18 vs.

19 BRINK'S INCORPORATED, a Delaware
Corporation, and DOES 1-5,

20 Defendant.
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Case No. CGC-15-545202

**ANSWER TO CLASS ACTION
COMPLAINT**

Action Filed: April 8, 2015
Trial Date: TBD

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
06/11/2015
Clerk of the Court
BY: MEREDITH GRIER
Deputy Clerk

Case No. CGC-15-545202

ANSWER TO CLASS ACTION COMPLAINT

Defendant Brink's Incorporated ("Defendant") answers the Class Action Complaint for Compensatory Damages, Statutory Penalties, Civil Penalties, Restitution, and Injunctive Relief ("Complaint") of Plaintiff Ernie Ricardo Fernandez ("Fernandez"), individually, and on behalf of all others similarly situated, and on behalf of the general public (collectively, "Plaintiffs"), in this action as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies generally and specifically each and every allegation contained in Plaintiffs' Complaint, and denies further that Plaintiffs have been injured in the amount or manner alleged or in any other manner whatsoever.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to the Complaint and each cause of action, claim and allegation contained therein, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to Set Forth Sufficient Facts)

As a separate and affirmative defense, Plaintiffs' Complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

As a separate and affirmative defense, Plaintiffs' Complaint, and each and every purported cause of action therein, fails to state a claim for which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

(Good Faith Belief)

As a separate and affirmative defense, Defendant at all times was acting in good faith and had reasonable grounds for believing that its method of compensating Plaintiffs was lawful.

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FOURTH AFFIRMATIVE DEFENSE**(Failure to Mitigate Damages)**

As a separate and affirmative defense, Plaintiffs have failed to properly mitigate their damages.

FIFTH AFFIRMATIVE DEFENSE**(Waiver and/or Estoppel)**

As a separate and affirmative defense, Plaintiffs' Complaint and each purported cause of action therein are barred by the doctrine of waiver and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE**(Avoidable Consequences)**

As a separate and affirmative defense, Plaintiffs' claims are barred by the doctrine of avoidable consequences because they unreasonably failed to take action to avoid the alleged damages, and some or all of the alleged damages would have been avoided by such action.

SEVENTH AFFIRMATIVE DEFENSE**(Laches)**

As a separate and affirmative defense, Plaintiffs waited an unreasonable period of time before asserting their claims, if any, against Defendant and are barred from asserting such claims under the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

As a separate and affirmative defense, Plaintiffs' Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE**(Action Brought in Bad Faith)**

As a separate and affirmative defense, Plaintiffs' Complaint herein was brought without reasonable cause and without a good-faith belief that there was a justifiable controversy under the facts of the law that warranted the filing of the Complaint against Defendant. Plaintiffs should therefore be responsible for all Defendant's necessary and reasonable defense costs, as more

1 particularly set forth in California Code of Civil Procedure, Section 1038.

2 **TENTH AFFIRMATIVE DEFENSE**

3 **(Justified Conduct)**

4 As a separate and affirmative defense, Defendant's conduct in regard to the matters alleged
5 in the Complaint was justified, and thus, Plaintiffs are barred from any recovery against Defendant.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 **(Unauthorized Work)**

8 As a separate and affirmative defense, any recovery on the Complaint is barred on the
9 ground that to the extent Plaintiffs did work any overtime, which Defendant denies, such work was
10 unauthorized by Defendant and performed without Defendant's knowledge

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 **(No Standing)**

13 As a separate and affirmative defense, Plaintiffs lack standing to bring said action against
14 this answering Defendant by this Complaint.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 **(Exempt from Overtime)**

17 As a separate and affirmative defense, Plaintiffs are barred from recovery for alleged
18 unpaid overtime as set forth in the Complaint to the extent that he is exempt from the overtime
19 provisions of the applicable laws, including the California Labor Code, the applicable California
20 Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act, or as further
21 provided by regulation, statute, or judicial decision.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 **(No Wages Due and Owing)**

24 As a separate and affirmative defense, this answering the claims in the Complaint for
25 penalties must fail to the extent that no wages were due and owing to Plaintiff at the times material
26 to his allegations.

27 //

28 //

FIFTEENTH AFFIRMATIVE DEFENSE**(Prior Settlement and Release Agreement)**

As a separate and affirmative defense, Plaintiffs are barred from asserting such claims due to a previous release and settlement agreement against this Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE**(After-Acquired Evidence)**

As a separate and affirmative defense, the Complaint and each purported cause of action alleged therein are barred, in whole or in part, by after-acquired evidence.

SEVENTEENTH AFFIRMATIVE DEFENSE**(Inadequate Representative)**

As a separate and affirmative defense, the proposed class representative does not meet the adequacy requirements for certification of a class action.

EIGHTEENTH AFFIRMATIVE DEFENSE**(Res Judicata and Collateral Estoppel)**

As a separate and affirmative defense, Plaintiff is barred from asserting such claims on the basis that such claims are barred under the doctrine of Res Judicata and/or Collateral Estoppel.

NINETEENTH AFFIRMATIVE DEFENSE**(Consent)**

As a separate and affirmative defense, the Complaint and each purported cause of action alleged therein are barred, in whole or in part, to the extent Plaintiffs consented to any and/or all of the conduct about which they now complaint.

TWENTIETH AFFIRMATIVE DEFENSE**(Statute of Limitations)**

As a separate and affirmative defense, this Defendant alleges that Plaintiff is barred from asserting any claims against Defendant by the applicable statute of limitations including, but not limited to, California Code of Civil Procedure sections 338, 339, 340, California Business and Professions Code § 17208, and/or California Labor Code § 203.

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TWENTY-FIRST AFFIRMATIVE DEFENSE**(Setoff, Offset, Recoupment)**

As a separate and affirmative defense, some or all of the purported causes of action in the Complaint are subject to setoff, offset or recoupment.

TWENTY-SECOND AFFIRMATIVE DEFENSE**(No Legal Cause)**

As a separate and affirmative defense, the acts and/or omissions, if any, of Defendant herein were not the legal causes of the losses, damages or injuries alleged in the Complaint.

TWENTY-THIRD AFFIRMATIVE DEFENSE**(Preemption)**

As a separate and affirmative defense, Plaintiff's claims are preempted by federal and state law, including, but not limited to, the Federal Aviation Administration Authorization Act and the Federal Motor Carrier Safety Act.

TWENTY-FOURTH AFFIRMATIVE DEFENSE**(Failure to Maintain a Claim for Unfair Competition)**

As a separate and affirmative defense, Defendant's business actions or practices were not unfair, unlawful, misleading, fraudulent or deceptive within the meaning of Business and Professions Code section 17200, et seq. Furthermore, the claims in the Complaint for unfair business practices are barred because Plaintiff has suffered no injury-in-fact as a result of any alleged violation of California's Unfair Competition Law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE**(Arbitration)**

As a separate and affirmative defense, this putative class action may not be litigated in a judicial forum because members of the putative class are subject to mandatory, final, and binding arbitration agreements with Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE**(Concurrent Exclusive Jurisdiction)**

As a separate and affirmative defense, the rule of exclusive concurrent jurisdiction requires

1 that this action be stayed.

2 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

3 **(Individual Questions – PAGA)**

4 As a separate and affirmative defense, the Complaint involve matters for which individual
5 questions predominate and therefore, are not appropriate claims for representative treatment
6 pursuant to California Labor Code section 2698 et seq. and other applicable legal standards.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 **(No Common or Typical Claims – PAGA)**

9 As a separate and affirmative defense, the claims in the Complaint are neither common to
10 nor typical of those, if any, of the alleged aggrieved employees identified in the Complaint.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 **(Inadequate Representative – PAGA)**

13 As a separate and affirmative defense, Plaintiff is not an adequate representative of the
14 alleged aggrieved employees identified in the Complaint, as Plaintiff is not similarly situated.

15 **THIRTIETH AFFIRMATIVE DEFENSE**

16 **(Individual Damage Questions – PAGA)**

17 As a separate and affirmative defense, the existence of any alleged damages involve
18 individual questions, making representative treatment pursuant to California Labor Code section
19 2698 et seq. improper.

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

21 **(Lack of Standing – PAGA)**

22 As a separate and affirmative defense, the proposed alleged aggrieved employees identified
23 in the Complaint lack standing to be members of the class.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Failure to Exhaust Administrative Remedies – PAGA)**

26 As a separate and affirmative defense, this Court lacks jurisdiction over the Complaint
27 because Plaintiff failed to exhaust his administrative remedies as required by California Labor
28 Code section 2699.3 and other applicable statutory provisions.

RESERVATION OF RIGHTS

Defendant reserves the right to assert any additional defenses and matters in avoidance that may be disclosed during the course of additional investigation and discovery, when and if the same have been ascertained.

PRAYER

WHEREFORE, this answering Defendant prays:

1. That Plaintiff takes nothing by way of his Complaint;
2. That this answering Defendant be awarded cost of suit incurred herein;
3. For reasonable attorney's fees;
4. For any further relief as the Court deems necessary and just.

DATED: June 11, 2015

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 
BECKI D. GRAHAM

Attorneys for Defendant
BRINK'S INCORPORATED

21455745.2

PROOF OF SERVICE*Ernie Ricardo Fernandez v. Brink's Incorporated, et al.*

Case No. CGC-15-545202

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of San Francisco in the office of a member of the bar of this court at whose direction the service was made. My business address is Steuart Tower, Suite 1300, One Market Plaza, San Francisco, CA 94105.

On June 11, 2015, I served the following document(s):

ANSWER TO CLASS ACTION COMPLAINT

by placing ☐ (the original) ☒ (a true copy thereof) in a sealed envelope addressed as stated on the person(s) listed below.

Brent A. Robinson, State Bar No. 289373
 Arlo Garcia Uriarte, State Bar No. 231764
 Liberation Law Group, P.C.
 2760 Mission Street
 San Francisco, CA 94110
 Telephone: 415.695.1000
 Facsimile: 415.695.1006
 Email: brent@liberationlawgroup.com
arlo@liberationlawgroup.com

Attorneys for Plaintiff
 Ernie Ricardo Fernandez

- ☒ **BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- ☐ **BY MAIL:** I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid at Steuart Tower, Suite 1300, One Market Plaza, San Francisco, CA 94105.
- ☐ **BY HAND DELIVERY:** I placed an envelope containing the above with Alan Constant of Urgent Express Legal Support for delivery.
- ☐ **BY OVERNIGHT DELIVERY:** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., San Francisco, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

1 ☐ **BY FACSIMILE** by transmitting a facsimile transmission a copy of said document(s) to
2 the following addressee(s) at the following number(s), in accordance with:

3 ☐ the written confirmation of counsel in this action:

4 ☐ [State Court motion, opposition or reply only] in accordance with Code of
5 Civil Procedure section 1005(b):

6 ☐ [Federal Court] in accordance with the written confirmation of counsel in
7 this action and order of the court:

8 ☐ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
9 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
10 documents to be sent to the person[s] at the e-mail addresses listed on the attached service
11 list. I did not receive, within a reasonable time after the transmission, any electronic
12 message or other indication that the transmission was unsuccessful.

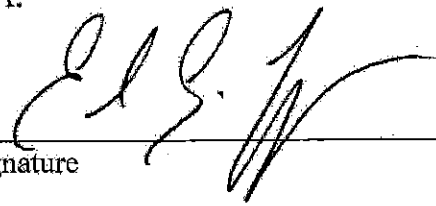
13 ☒ **(State)** I declare under penalty of perjury under the laws of the State of California that
14 the above is true and correct.

15 ☐ **(Federal)** I declare that I am employed in the office of a member of the State Bar of this
16 Court at whose direction the service was made. I declare under penalty of
17 perjury under the laws of the United States of America that the above is true and
18 correct.

19 Executed on June 11, 2015, at San Francisco, CA.

20 Elena E. Ruiz

21 Type or Print Name

22 
Signature

23 21476500.1